



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
rebecca@lozeaudrury.com

October 9, 2019

OCT 15 2019

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Lilburn C. Lamar, Sr., Owner  
Lilburn C. Lamar, Jr., Vice President  
Dan Ferro, Safety and Environmental Manager  
Tri C Manufacturing, Inc.  
520 Harbor Blvd.  
West Sacramento, CA 95691

Tri C Manufacturing, Inc. Tire Recycling Division  
520 Harbor Blvd.  
West Sacramento, CA 95691

**VIA FIRST CLASS MAIL**

Lilburn C Lamar, Jr.  
(Registered Agent for Service of  
Process for Tri C Manufacturing, Inc.)  
520 Harbor Blvd.  
West Sacramento, CA 95691

**Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act**

Dear Messrs. Lamar and Ferro:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at your industrial facility located at 520 Harbor Boulevard in West Sacramento, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Sacramento River, the Sacramento-San Joaquin Delta and other California waters. This letter is being sent to the owners and operators of the Facility including Tri C Manufacturing, Inc., Tri C Manufacturing, Inc. Tire Recycling Division, Lilburn C. Lamar, Sr., Lilburn C. Lamar, Jr., and Dan Ferro as the responsible owners and operators of the Facility (all recipients are hereinafter collectively referred to as "TCM").

This letter addresses TCM's unlawful discharge of pollutants from the Facility into the municipal storm water system, which discharges into the Sacramento River and then into the Sacramento-San Joaquin River Delta. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State

Water Resources Control Board (“State Board”) Order No. 97-03-DWQ (“1997 Permit”) as renewed by Order No. 2015-0057-DWQ (“2015 Permit”). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CSPA refers to the 1997 and 2015 Permits in this letter collectively as the “General Permit.” The Waste Discharger Identification Number (“WDID”) for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Central Valley Region (“Regional Board”) and the State Board is 5S57I027415. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”) and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CSPA hereby places TCM on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against TCM under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## **I. Background.**

### **A. The Facility.**

On or about October 23, 2017, TCM filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). TCM certifies that the Facility is classified as SIC code 5093 (“scrap and waste materials”) and 3559 (“special industry machinery, NEC”). The Facility collects and discharges storm water from its 3.4-acre industrial site into at least eight storm water discharge locations at the Facility.

On information and belief, CSPA alleges that the outfalls contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur. Storm water discharged from the Facility flows into the municipal storm water system, which discharges into the Sacramento River, which flows into the Sacramento-San Joaquin Delta.

### **B. Water Quality Standards, Guidelines, and Numeric Action Levels.**

The Regional Board has identified beneficial uses of the Central Valley Region’s waters and established water quality standards for the Sacramento River and its tributaries, and the Delta in “The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River

Basin,” generally referred to as the Basin Plan. *See* [http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/sacsjr.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf). The beneficial uses of these waters include, among others, domestic and municipal supply, water contact recreation, non-contact water recreation, wildlife habitat, warm and cold freshwater habitat, and fish spawning. The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” Basin Plan at 2-2. Visible pollution, including cloudy or muddy water from industrial areas, impairs people’s use of the Sacramento River and the Delta for contact and non-contact water recreation. Water contact recreation includes “[u]ses of water for recreational activities involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, swimming, wading, water-skiing and scuba diving, surfing, white water activities, fishing, or use of natural hot springs.” *Id.*

The Basin Plan establishes water quality standards for the Sacramento River and its tributaries and the Sacramento-San Joaquin Delta. It includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” *Id.* at 3-15. It provides that “[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-7. It provides that “[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses.” *Id.* at 3-6. The Basin Plan provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-13. The Basin Plan further requires that “[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-15. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at 3-8. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.* The Basin Plan further provides that “[w]ater shall not contain biostimulatory substances which promote aquatic growths in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-3. The Basin Plan provides that “the dissolved oxygen concentration shall not be reduced below[] 7.0 mg/l in the Sacramento River (below the I Street Bridge) and in all Delta waters west of the Antioch Bridge.” *Id.* at 3-6.

The Basin Plan provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs) specified in the following provisions of Title 22 of the California Code of Regulations, which are incorporated by reference into this plan: Tables 64431-A (Inorganic Chemicals) and 64431-B (Fluoride) of Section 64431, Table 64444-A (Organic Chemicals) of Section 64444, and Tables 64449-A (Secondary Maximum Contaminant Levels-Consumer Acceptance Limits) and 64449-B (Secondary Maximum Contaminant Levels-Ranges) of Section 64449.” *Id.* at 3-16. Table 64431-A provides an MCL for iron of 1.0 mg/L.

Table 64449-A provides Secondary MCL (“SMCL”) for iron of 0.3 mg/L, and for aluminum of 0.2 mg/L.

Table 3-1 of the Basin Plan establishes a water quality objective (“WQO”) for iron of 0.3 mg/L and for zinc of 0.1 mg/L (with some variation based on the hardness of the receiving water). The EPA has adopted a freshwater numeric water quality standard for zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC” and Criteria Continuous Concentration – “CCC”). 65 Fed.Reg. 31712 (May 18, 2000) (California Toxics Rule).

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).<sup>1</sup> The following benchmarks have been established for pollutants discharged by TCM: pH – 6.0 - 9.0 standard units (“s.u.”), total suspended solids (“TSS”) – 100 mg/L, and Oil and Grease (“O&G”) – 15 mg/L, iron – 1.0 mg/L, aluminum – 0.75 mg/L, and zinc – 0.117 mg/L.

The 2015 Permit establishes Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L, iron – 1.0 mg/L, aluminum – 0.75 mg/L, and zinc – 0.26 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and O&G– 25 mg/L.

## **II. Alleged Violations of the NPDES Permit.**

### **A. Discharges in Violation of the Permit.**

TCM has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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<sup>1</sup> The Benchmark Values can be found at:  
[http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf).

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

TCM has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, iron, aluminum, and zinc in violation of the General Permit. TCM's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

<b>Sampling / Observation Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Basin Plan/SMCL/CTR</b>	<b>Outfall (as identified by Facility)</b>
3/13/2018	pH	6.45	6.5-8.5 (Basin Plan)	DP#1
2/13/2019	Iron	1.9 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#1
2/13/2019	Iron	3.8 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#2
2/13/2019	Iron	2 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#3
2/13/2019	Iron	0.78 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#5

2/2/2019	Iron	4.2 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#1
2/2/2019	Iron	5.8 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#2
2/2/2019	Iron	3.5 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#3
2/2/2019	Iron	1.1 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#5
1/15/2019	Iron	9.1 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#1
1/15/2019	Iron	6.3 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#2
1/15/2019	Iron	4.5 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#3
1/15/2019	Iron	1 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#4
1/15/2019	Iron	1.2 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#5
11/29/2018	Iron	5.3 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#1
11/29/2018	Iron	15 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#2
11/29/2018	Iron	8.1 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#3
11/29/2018	Iron	4.5 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#4
11/29/2018	Iron	0.48 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#5
3/13/2018	Iron	30 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#1
3/13/2018	Iron	3.9 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#2
3/13/2018	Iron	12 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#3
3/13/2018	Iron	1.8 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#5
3/1/2018	Iron	92 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#1
3/1/2018	Iron	11 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#2
3/1/2018	Iron	8.8 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#3
3/1/2018	Iron	0.49 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#5

1/8/2018	Iron	52 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#1
1/8/2018	Iron	13 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#2
1/8/2018	Iron	9.5 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#3
1/8/2018	Iron	0.79 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#5
11/16/2017	Iron	65 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#1
11/16/2017	Iron	11 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#2
11/4/2017	Iron	2.5 mg/L	0.3 mg/L (SMCL & WQO) / 1.0 mg/L (MCL)	DP#2
2/13/2019	Aluminum	1.3 mg/L	0.2 mg/L (SMCL)	DP#1
2/13/2019	Aluminum	1.6 mg/L	0.2 mg/L (SMCL)	DP#2
2/13/2019	Aluminum	1.3 mg/L	0.2 mg/L (SMCL)	DP#3
2/13/2019	Aluminum	0.36 mg/L	0.2 mg/L (SMCL)	DP#5
2/2/2019	Aluminum	1.8 mg/L	0.2 mg/L (SMCL)	DP#1
2/2/2019	Aluminum	1.5 mg/L	0.2 mg/L (SMCL)	DP#2
2/2/2019	Aluminum	1.7 mg/L	0.2 mg/L (SMCL)	DP#3
2/2/2019	Aluminum	0.2 mg/L	0.2 mg/L (SMCL)	DP#4
2/2/2019	Aluminum	0.41 mg/L	0.2 mg/L (SMCL)	DP#5
1/15/2019	Aluminum	4 mg/L	0.2 mg/L (SMCL)	DP#1
1/15/2019	Aluminum	2.1 mg/L	0.2 mg/L (SMCL)	DP#2
1/15/2019	Aluminum	2.2 mg/L	0.2 mg/L (SMCL)	DP#3
1/15/2019	Aluminum	0.6 mg/L	0.2 mg/L (SMCL)	DP#4
1/15/2019	Aluminum	0.67 mg/L	0.2 mg/L (SMCL)	DP#5
11/29/2018	Aluminum	2.7 mg/L	0.2 mg/L (SMCL)	DP#1
11/29/2018	Aluminum	3.9 mg/L	0.2 mg/L (SMCL)	DP#2
11/29/2018	Aluminum	3.8 mg/L	0.2 mg/L (SMCL)	DP#3
11/29/2018	Aluminum	2.4 mg/L	0.2 mg/L (SMCL)	DP#4
11/29/2018	Aluminum	0.29 mg/L	0.2 mg/L (SMCL)	DP#5
3/13/2018	Aluminum	10 mg/L	0.2 mg/L (SMCL)	DP#1
3/13/2018	Aluminum	1.5 mg/L	0.2 mg/L (SMCL)	DP#2
3/13/2018	Aluminum	5 mg/L	0.2 mg/L (SMCL)	DP#3
3/13/2018	Aluminum	1 mg/L	0.2 mg/L (SMCL)	DP#5
3/1/2018	Aluminum	35 mg/L	0.2 mg/L (SMCL)	DP#1
3/1/2018	Aluminum	1.9 mg/L	0.2 mg/L (SMCL)	DP#2
3/1/2018	Aluminum	4.1 mg/L	0.2 mg/L (SMCL)	DP#3
3/1/2018	Aluminum	0.24 mg/L	0.2 mg/L (SMCL)	DP#5
1/8/2018	Aluminum	18 mg/L	0.2 mg/L (SMCL)	DP#1
1/8/2018	Aluminum	3.3 mg/L	0.2 mg/L (SMCL)	DP#2

1/8/2018	Aluminum	5.3 mg/L	0.2 mg/L (SMCL)	DP#3
1/8/2018	Aluminum	0.47 mg/L	0.2 mg/L (SMCL)	DP#5
11/16/2017	Aluminum	17 mg/L	0.2 mg/L (SMCL)	DP#1
11/16/2017	Aluminum	3.1 mg/L	0.2 mg/L (SMCL)	DP#2
11/4/2017	Aluminum	0.62 mg/L	0.2 mg/L (SMCL)	DP#2
2/13/2019	Zinc	0.12 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#1
2/13/2019	Zinc	0.16 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#2
2/2/2019	Zinc	0.26 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#1
2/2/2019	Zinc	0.75 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#2
2/2/2019	Zinc	0.33 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#3
2/2/2019	Zinc	0.15 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#5
1/15/2019	Zinc	0.56 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#1
1/15/2019	Zinc	0.79 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#2
1/15/2019	Zinc	0.18 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#3
1/15/2019	Zinc	0.15 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#5
11/29/2018	Zinc	0.39 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#1
11/29/2018	Zinc	1.6 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#2
11/29/2018	Zinc	0.38 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#3
11/29/2018	Zinc	0.29 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#4
11/29/2018	Zinc	0.13 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#5
3/13/2018	Zinc	1.8 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#1
3/13/2018	Zinc	0.42 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#2
3/13/2018	Zinc	0.47 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#3
3/13/2018	Zinc	0.19 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#4



3/1/2018	Zinc	6.3 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#1
3/1/2018	Zinc	1.4 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#2
3/1/2018	Zinc	0.32 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#3
1/8/2018	Zinc	3.4 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#1
1/8/2018	Zinc	1.5 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#2
1/8/2018	Zinc	0.35 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#3
11/16/2017	Zinc	4 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#1
11/16/2017	Zinc	1.6 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#2
11/4/2017	Zinc	2.8 mg/L	0.1 mg/L (WQO) / 0.12 mg/L (CTR)	DP#2

The information in the above table reflects data gathered from TCM's self-monitoring during the 2017-2018 and 2018-2019 reporting years. CSPA alleges that since at least October 9, 2014, and continuing through the date of this notice, TCM has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standard, including but not limited to each of the following:

- pH - 6.5-8.5 (Basin Plan)
- Iron – 1.0 mg/L (MCL)
- Iron - 0.3 mg/L (WQO and SMCL)
- Aluminum - 0.2 mg/L (SMCL)
- Zinc – 0.1 mg/L (WQO)
- Zinc – 0.12 mg/L (CTR)

The following discharges of pollutants from the Facility in excess of NALs and EPA benchmark levels have contained measurements of pollutants in excess of applicable NALs and EPA benchmarks. The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

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<b>Sampling / Observation Date</b>	<b>Parameter</b>	<b>Observed Concentration / Conditions</b>	<b>EPA Benchmark Value / Annual NAL</b>	<b>Outfall (as identified by the Facility)</b>
2/13/2019	Iron	1.9 mg/L	1.0 mg/L	DP#1
2/13/2019	Iron	3.8 mg/L	1.0 mg/L	DP#2
2/13/2019	Iron	2 mg/L	1.0 mg/L	DP#3
2/13/2019	Iron	0.12 mg/L	1.0 mg/L	DP#4
2/13/2019	Iron	0.78 mg/L	1.0 mg/L	DP#5
2/2/2019	Iron	4.2 mg/L	1.0 mg/L	DP#1
2/2/2019	Iron	5.8 mg/L	1.0 mg/L	DP#2
2/2/2019	Iron	3.5 mg/L	1.0 mg/L	DP#3
2/2/2019	Iron	0.29 mg/L	1.0 mg/L	DP#4
2/2/2019	Iron	1.1 mg/L	1.0 mg/L	DP#5
1/15/2019	Iron	9.1 mg/L	1.0 mg/L	DP#1
1/15/2019	Iron	6.3 mg/L	1.0 mg/L	DP#2
1/15/2019	Iron	4.5 mg/L	1.0 mg/L	DP#3
1/15/2019	Iron	1 mg/L	1.0 mg/L	DP#4
1/15/2019	Iron	1.2 mg/L	1.0 mg/L	DP#5
11/29/2018	Iron	5.3 mg/L	1.0 mg/L	DP#1
11/29/2018	Iron	15 mg/L	1.0 mg/L	DP#2
11/29/2018	Iron	8.1 mg/L	1.0 mg/L	DP#3
11/29/2018	Iron	4.5 mg/L	1.0 mg/L	DP#4
11/29/2018	Iron	0.48 mg/L	1.0 mg/L	DP#5
2018-2019 Reporting Year	Iron	3.95 mg/L	1.0 mg/L	All Sampling Locations <sup>2</sup>
3/13/2018	Iron	30 mg/L	1.0 mg/L	DP#1
3/13/2018	Iron	3.9 mg/L	1.0 mg/L	DP#2
3/13/2018	Iron	12 mg/L	1.0 mg/L	DP#3
3/13/2018	Iron	1.8 mg/L	1.0 mg/L	DP#5
3/1/2018	Iron	92 mg/L	1.0 mg/L	DP#1
3/1/2018	Iron	11 mg/L	1.0 mg/L	DP#2
3/1/2018	Iron	8.8 mg/L	1.0 mg/L	DP#3
3/1/2018	Iron	0.49 mg/L	1.0 mg/L	DP#5
1/8/2018	Iron	52 mg/L	1.0 mg/L	DP#1
1/8/2018	Iron	13 mg/L	1.0 mg/L	DP#2
1/8/2018	Iron	9.5 mg/L	1.0 mg/L	DP#3
1/8/2018	Iron	0.79 mg/L	1.0 mg/L	DP#5
11/16/2017	Iron	65 mg/L	1.0 mg/L	DP#1
11/16/2017	Iron	11 mg/L	1.0 mg/L	DP#2
11/4/2017	Iron	2.5 mg/L	1.0 mg/L	DP#2

<sup>2</sup> This value represents the average of all iron measurements taken at the Facility during the 2018-2019 reporting year and is higher than 1 mg/L, the annual NAL for iron.

2017-2018 Reporting Year	Iron	20.92 mg/L	1.0 mg/L	All Sampling Locations <sup>3</sup>
2/13/2019	Aluminum	1.3 mg/L	0.75 mg/L	DP#1
2/13/2019	Aluminum	1.6 mg/L	0.75 mg/L	DP#2
2/13/2019	Aluminum	1.3 mg/L	0.75 mg/L	DP#3
2/13/2019	Aluminum	0.07 mg/L	0.75 mg/L	DP#4
2/13/2019	Aluminum	0.36 mg/L	0.75 mg/L	DP#5
2/2/2019	Aluminum	1.8 mg/L	0.75 mg/L	DP#1
2/2/2019	Aluminum	1.5 mg/L	0.75 mg/L	DP#2
2/2/2019	Aluminum	1.7 mg/L	0.75 mg/L	DP#3
2/2/2019	Aluminum	0.2 mg/L	0.75 mg/L	DP#4
2/2/2019	Aluminum	0.41 mg/L	0.75 mg/L	DP#5
1/15/2019	Aluminum	4 mg/L	0.75 mg/L	DP#1
1/15/2019	Aluminum	2.1 mg/L	0.75 mg/L	DP#2
1/15/2019	Aluminum	2.2 mg/L	0.75 mg/L	DP#3
1/15/2019	Aluminum	0.6 mg/L	0.75 mg/L	DP#4
1/15/2019	Aluminum	0.67 mg/L	0.75 mg/L	DP#5
11/29/2018	Aluminum	2.7 mg/L	0.75 mg/L	DP#1
11/29/2018	Aluminum	3.9 mg/L	0.75 mg/L	DP#2
11/29/2018	Aluminum	3.8 mg/L	0.75 mg/L	DP#3
11/29/2018	Aluminum	2.4 mg/L	0.75 mg/L	DP#4
11/29/2018	Aluminum	0.29 mg/L	0.75 mg/L	DP#5
2018-2019 Reporting Year	Aluminum	1.65 mg/L	0.75 mg/L	All Sampling Locations <sup>4</sup>
3/13/2018	Aluminum	10 mg/L	0.75 mg/L	DP#1
3/13/2018	Aluminum	1.5 mg/L	0.75 mg/L	DP#2
3/13/2018	Aluminum	5 mg/L	0.75 mg/L	DP#3
3/13/2018	Aluminum	1 mg/L	0.75 mg/L	DP#5
3/1/2018	Aluminum	35 mg/L	0.75 mg/L	DP#1
3/1/2018	Aluminum	1.9 mg/L	0.75 mg/L	DP#2
3/1/2018	Aluminum	4.1 mg/L	0.75 mg/L	DP#3
3/1/2018	Aluminum	0.24 mg/L	0.75 mg/L	DP#5
1/8/2018	Aluminum	18 mg/L	0.75 mg/L	DP#1
1/8/2018	Aluminum	3.3 mg/L	0.75 mg/L	DP#2
1/8/2018	Aluminum	5.3 mg/L	0.75 mg/L	DP#3
1/8/2018	Aluminum	0.47 mg/L	0.75 mg/L	DP#5
11/16/2017	Aluminum	17 mg/L	0.75 mg/L	DP#1

<sup>3</sup> This value represents the average of all iron measurements taken at the Facility during the 2017-2018 reporting year and is higher than 1 mg/L, the annual NAL for iron.

<sup>4</sup> This value represents the average of all aluminum measurements taken at the Facility during the 2018-2019 reporting year and is higher than 0.75 mg/L, the annual NAL for aluminum.

11/16/2017	Aluminum	3.1 mg/L	0.75 mg/L	DP#2
11/4/2017	Aluminum	0.62 mg/L	0.75 mg/L	DP#2
2017-2018 Reporting Year	Aluminum	7.1 mg/L	0.75 mg/L	All Sampling Locations <sup>5</sup>
2/13/2019	Zinc	0.12 mg/L	0.26 mg/L	DP#1
2/13/2019	Zinc	0.16 mg/L	0.26 mg/L	DP#2
2/13/2019	Zinc	0.11 mg/L	0.26 mg/L	DP#3
2/13/2019	Zinc	0.08 mg/L	0.26 mg/L	DP#4
2/13/2019	Zinc	0.05 mg/L	0.26 mg/L	DP#5
2/2/2019	Zinc	0.26 mg/L	0.26 mg/L	DP#1
2/2/2019	Zinc	0.75 mg/L	0.26 mg/L	DP#2
2/2/2019	Zinc	0.33 mg/L	0.26 mg/L	DP#3
2/2/2019	Zinc	0.11 mg/L	0.26 mg/L	DP#4
2/2/2019	Zinc	0.15 mg/L	0.26 mg/L	DP#5
1/15/2019	Zinc	0.56 mg/L	0.26 mg/L	DP#1
1/15/2019	Zinc	0.79 mg/L	0.26 mg/L	DP#2
1/15/2019	Zinc	0.18 mg/L	0.26 mg/L	DP#3
1/15/2019	Zinc	0.06 mg/L	0.26 mg/L	DP#4
1/15/2019	Zinc	0.15 mg/L	0.26 mg/L	DP#5
11/29/2018	Zinc	0.39 mg/L	0.26 mg/L	DP#1
11/29/2018	Zinc	1.6 mg/L	0.26 mg/L	DP#2
11/29/2018	Zinc	0.38 mg/L	0.26 mg/L	DP#3
11/29/2018	Zinc	0.29 mg/L	0.26 mg/L	DP#4
11/29/2018	Zinc	0.13 mg/L	0.26 mg/L	DP#5
2018-2019 Reporting Year	Zinc	0.33 mg/L	0.26 mg/L	All Sampling Locations <sup>6</sup>
3/13/2018	Zinc	1.8 mg/L	0.26 mg/L	DP#1
3/13/2018	Zinc	0.42 mg/L	0.26 mg/L	DP#2
3/13/2018	Zinc	0.47 mg/L	0.26 mg/L	DP#3
3/13/2018	Zinc	0.19 mg/L	0.26 mg/L	DP#4
3/1/2018	Zinc	6.3 mg/L	0.26 mg/L	DP#1
3/1/2018	Zinc	1.4 mg/L	0.26 mg/L	DP#2
3/1/2018	Zinc	0.32 mg/L	0.26 mg/L	DP#3
3/1/2018	Zinc	0.11 mg/L	0.26 mg/L	DP#5
1/8/2018	Zinc	3.4 mg/L	0.26 mg/L	DP#1
1/8/2018	Zinc	1.5 mg/L	0.26 mg/L	DP#2
1/8/2018	Zinc	0.35 mg/L	0.26 mg/L	DP#3

<sup>5</sup> This value represents the average of all aluminum measurements taken at the Facility during the 2017-2018 reporting year and is higher than 0.75 mg/L, the annual NAL for aluminum.

<sup>6</sup> This value represents the average of all zinc measurements taken at the Facility during the 2018-2019 reporting year and is higher than 0.26 mg/L, the annual NAL for zinc.

1/8/2018	Zinc	0.11 mg/L	0.26 mg/L	DP#5
11/16/2017	Zinc	4 mg/L	0.26 mg/L	DP#1
11/16/2017	Zinc	1.6 mg/L	0.26 mg/L	DP#2
11/4/2017	Zinc	2.8 mg/L	0.26 mg/L	DP#2
2017-2018 Reporting Year	Zinc	1.65 mg/L	0.26 mg/L	All Sampling Locations <sup>7</sup>
3/13/2018	TSS	540 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#1
3/13/2018	TSS	60 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#2
3/13/2018	TSS	200 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#3
3/13/2018	TSS	23 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#4
3/1/2018	TSS	1000 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#1
3/1/2018	TSS	120 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#2
3/1/2018	TSS	130 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#3
3/1/2018	TSS	11 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#5
1/8/2018	TSS	910 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#1
1/8/2018	TSS	150 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#2
1/8/2018	TSS	170 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#3
1/8/2018	TSS	13 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#5
11/16/2017	TSS	470 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#1
11/16/2017	TSS	92 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#2
11/4/2017	TSS	110 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	DP#2
2017-2018 Reporting Year	TSS	266.6 mg/L	100 mg/L (annual)/ 400 mg/L (instant.)	All Sampling Locations <sup>8</sup>

<sup>7</sup> This value represents the average of all zinc measurements taken at the Facility during the 2017-2018 reporting year and is higher than 0.26 mg/L, the annual NAL for zinc.

<sup>8</sup> This value represents the average of all TSS measurements taken at the Facility during the 2017-2018 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

The information in the above table reflects data gathered from TCM's self-monitoring during the 2017-2018 and 2018-2019 reporting years. CSPA notes that the Facility exceeded the annual NALs for iron, aluminum, zinc, and TSS. TCM alleges that since at least October 9, 2014, TCM has discharged storm water contaminated with pollutants at levels that exceed the applicable NALs and related EPA benchmarks for iron, aluminum, zinc, and TSS.

CSPA's investigation, including its review of TCM's Storm Water Pollution Prevention Plan ("SWPPP"), the December 2018 Level 1 ERA Report, TCM's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable NALs and EPA benchmark values, and the absence of sufficient advanced storm water pollution control measures indicates that TCM has not implemented BAT and BCT at the Facility for its discharges of iron, aluminum, zinc, TSS, and potentially other pollutants, in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. TCM was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, TCM is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since October 9, 2014, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that TCM has discharged storm water containing impermissible and unauthorized levels of iron, aluminum, zinc, and TSS in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.<sup>9</sup>

Further, CSPA puts TCM on notice that 2015 Permit Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) are each separate, independent requirements with which TCM must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the 2015 Permit's Effluent Limitations, including TCM's obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State and is evidence relevant to determining that BAT and BCT have not been implemented at the Facility, the NALs

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<sup>9</sup> The rain dates on the attached table are all the days when 0.1" or more rain was observed from a weather station at the Sacramento Executive Airport located approximately 10 miles away from the Facility. The data was downloaded via <http://www.ncdc.noaa.gov/cdo-web/search>. (Last accessed on September 30, 2019).

are not by themselves technology based criteria that alone determine whether an industrial facility has implemented best management practices (“BMPs”) that achieve BAT/BCT.<sup>10</sup> Thus, even if a facility is discharging pollutants below the NALs, the facility may not have implemented BAT and BCT. Finally, even though in December 2018 TCM submitted a Level 1 Exceedance Response Action Report to the Regional Board pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of iron, aluminum, zinc, TSS, pH, and polluted storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TCM is subject to penalties for violations of the General Permit and the Act since October 9, 2014.

**B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.**

**i. Failure to Collect and Analyze Storm Water Discharges.**

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. *See* 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. *See* 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility’s discharge to ensure compliance with the General Permit’s discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that BMPs are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

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<sup>10</sup> “The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit.” 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger evaluation and reporting requirements. *See* 2015 Permit, Section XII.

**i. Failure to Conduct Sampling and Analysis**

The 1997 Permit requires dischargers to collect storm water samples from all storm water discharge locations during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and “shall explain in the Annual Report why the first storm event was not sampled.” *See* 1997 Permit, § B(5)(a). The 2015 Permit shortens the preceding no discharge period to 48 hours. *See* 2015 Permit, § XI(B)(1). Samples must be collected from each drainage area at all discharge locations and be representative of storm water associated with the Facility’s industrial activity and any commingled discharges. *See* 2015 Permit, § XI(B)(4); *see also* 1997 Permit § B(5)(a). “The Discharger shall collect and analyze storm water samples from two (2) [qualifying storm events] QSEs within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).” 2015 Permit, XI(B)(2). A discharger must submit the sampling and analytical results to the State Board’s SMARTs database “within 30 days of obtaining all results for each sampling event.” 2015 Permit, XI(B)(11)(a).

Generally, storm water samples must be “collected from each drainage area at all discharge locations.” 2015 Permit XI(B)(4). A discharger “may reduce the number of locations to be sampled in each drainage area . . . if the industrial activities, BMPs, and physical characteristics . . . of the drainage area for each location to be sampled are substantially similar to one another.” 2015 Permit XI(C)(4)(a). To qualify for a Representative Sampling Reduction, a discharger must provide a Representative Sampling Reduction Justification in the Monitoring Implementation Plan section of its SWPPP.

The SWPPP claims that discharges at discharge location DP#3 are representative of discharges at discharge locations DP#3 and DP#7. Similarly, the SWPPP claims that discharges at DP#4 are representative of discharges at discharge locations DP#4 and DP#6. On information and belief, CSPA alleges that discharges from DP#3 are not “[r]epresentative of storm water associated with industrial activities” of both DP#3 and DP#7, and discharges from DP#4 are similarly not representative of discharges from DP#7. *See* 2015 Permit Section XI(B)(4)(a).

Even if TCM validly reduced its sampling of discharge locations DP#6 and DP#7, TCM failed to comply with the General Permit’s sampling and analysis requirements during the 2017-2018 reporting year. On information and belief, CSPA alleges that during the 2017-2018 reporting year, TCM:



- Failed to sample and analyze any storm water discharges from discharge point DP#4; and
- Failed to sample and analyze one of the four storm water discharges from discharge points #3 and #5.

Because TCM did not take samples from these discharge points during the 2017-2018 reporting year, TCM has violated the General Permit's monitoring requirements. These violations of the General Permit are ongoing. TCM is subject to penalties for each of those daily violations of the General Permit and the Act's monitoring and sampling requirements.

**C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan**

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. *See* 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. *See* 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit §§ X(G)(2); X(H)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be robust enough to meet the General Permit's and 33 U.S.C. § 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent Limitation B(3), Receiving Water Limitation C(3).

In addition, as part of the SWPPP, dischargers must prepare "a site map that includes notes, legends, a north arrow, and other data as appropriate to ensure the map is clear, legible and understandable." 2015 Permit, ¶ X(E)(1). The map must include "[t]he facility boundary, storm water drainage areas within the facility boundary, and portions of any drainage area impacted by discharges from surrounding areas." *Id.*, ¶ X(E)(3)(a).

Despite these clear requirements, TCM has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

TCM's SWPPP map fails to comply with the requirements of Section X(E)(3)(a) of the 2015 Permit because the map does not depict storm water drainage areas within the Facility boundary.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded applicable water quality standards, EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, TCM has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. The SWPPP fails to comply with the requirements of Section X(G)(2)(b) of the 2015 Permit. The SWPPP fails to implement required advanced BMPs.

CSPA puts TCM on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP.

These violations are ongoing, and CSPA will include additional violations as information and data become available. TCM is subject to civil penalties for all violations of the CWA occurring since October 9, 2014.

**D. Failure to Comply with Annual Reporting Requirements.**

Section XVI of the General Permit sets forth Annual Reporting requirements for all dischargers. Dischargers are required to prepare and electronically submit an Annual Report by September 1 of each year. 2015 Permit Section XVI(A). Section XVI(D) sets forth various requirements related to storm water monitoring information that must be included in the Annual Report. Section XVI(E) sets forth various requirements for training information that must be included with the Annual Report. On information and belief, CSPA alleges that TCM did not prepare or file an Annual Report for the 2017-2018 or the 2018-2019 reporting years, in violation of Section XVI of the 2015 Permit.

CSPA puts TCM on notice that it violates the General Permit and the CWA every day that the Facility fails to submit a proper Annual Report. These violations are ongoing, and CSPA will include additional violations as information and data become available. TCM is subject to civil penalties for all violations of the CWA occurring since at least October 9, 2014.

**E. Failure to Comply with 2015 Permit Evaluation and ERA Requirements.**

On or about December 10, 2018, TCM submitted a "Level 1 ERA Report" to the State Board's SMARTs system. The Level 1 report and Level 1 status are triggered by exceedances of the NALs. The ERA Level 1 report must, among other requirements, "[i]dentify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of this General Permit." 2015 Permit, § VII(C)(1)(c).

Level 2 status and the requirements to submit Level 2 reports are triggered by ongoing exceedances of the NALs. In order to return to baseline status from Level 2 status, TCM must have "implemented BMPs to prevent future NAL exceedance(s)." 2015 Permit Section XII(D)(4)(a).

TCM's Level 1 ERA Report addresses the Facility's exceedance of the NALs for TSS, iron, aluminum, and zinc during the 2017-2018 reporting year. Based on ongoing exceedances of NALs for iron, aluminum, and zinc during the 2018-2019 reporting year, the Facility is now in Level 2 status for those parameters. The Facility is required to prepare and submit to the Regional Board a Level 2 ERA Action Plan to address iron, aluminum, and zinc by January 1, 2020.

Although TCM's Level 1 ERA Report addresses TSS, iron, aluminum, and zinc, TCM failed to identify BMPs necessary to prevent future NAL exceedances or to comply with the BAT/BCT requirement of the Permit. The measures identified in the ERA could not achieve, and indeed did not achieve, the applicable NAL for iron, aluminum, and zinc. As for TSS, although

the Facility did not exceed the NALs established for TSS, CSPA is informed and believes that the additional sweeping and wattles are not sufficient to constitute BCT to address TSS at the Facility.

Although “[i]t is not a violation of this General Permit to exceed the NAL values; it is a violation of the permit, however, to fail to comply with the Level 1 status and Level 2 status ERA requirements in the event of NAL exceedances.” Fact Sheet, p. 60. Accordingly, CSPA puts TCM on notice that it has violated and continues to violate the General Permit and the CWA every day that the Facility operates without and adequate Level 1 ERA Reports for TSS, iron, aluminum. These violations are ongoing. TCM is subject to civil penalties for each day it has failed to submit an adequate Level 1 ERA Report.

### **III. Persons Responsible for the Violations.**

CSPA puts Tri C Manufacturing, Inc., Tri C Manufacturing, Inc. Tire Recycling Division, Lilburn C Lamar, Sr., Lilburn C Lamar, Jr., and Dan Ferro on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Tri C Manufacturing, Inc., Tri C Manufacturing, Inc. Tire Recycling Division, Lilburn C Lamar, Sr., Lilburn C Lamar, Jr., and Dan Ferro on notice that it intends to include those subsequently identified persons in this action.

### **IV. Name and Address of Noticing Parties.**

The name, address and telephone number of CSPA is as follows:

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance  
3536 Rainier Avenue  
Stockton, CA 95204  
Tel. (209) 464-5067

### **V. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Rebecca L. Davis  
Michael R. Lozeau  
Lozeau Drury LLP  
1939 Harrison St., Suite 150  
Oakland, California 94612  
Tel. (510) 836-4200  
rebecca@lozeaudrury.com  
michael@lozeaudrury.com

## **VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects TCM to a penalty of up to \$37,500 per day per violation for all violations occurring since October 9, 2014, up to and including November 2, 2015, and up to \$54,833 for violations occurring after November 2, 2015. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against TCM and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebecca L. Davis', with a long horizontal flourish extending to the right.

Rebecca L. Davis  
Lozeau Drury LLP

**SERVICE LIST – via certified mail**

Andrew Wheeler, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Eileen Sobeck, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

William Barr, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Mike Stoker, Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Patrick Pulupa, Executive Officer  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

**ATTACHMENT A**  
**Rain Dates, Tri C Manufacturing, Inc., Sacramento, CA**

11/4/2017	12/25/2018
11/9/2017	1/5/2019
11/15/2017	1/6/2019
11/16/2017	1/9/2019
11/26/2017	1/15/2019
11/27/2017	1/16/2019
12/20/2017	1/20/2019
1/3/2018	2/1/2019
1/4/2018	2/2/2019
1/5/2018	2/3/2019
1/8/2018	2/4/2019
1/9/2018	2/8/2019
1/22/2018	2/9/2019
1/24/2018	2/13/2019
1/25/2018	2/14/2019
2/26/2018	2/15/2019
3/1/2018	2/25/2019
3/2/2018	2/26/2019
3/3/2018	2/27/2019
3/13/2018	3/2/2019
3/14/2018	3/5/2019
3/15/2018	3/6/2019
3/16/2018	3/20/2019
3/20/2018	3/22/2019
3/21/2018	3/25/2019
3/22/2018	3/27/2019
4/5/2018	4/2/2019
4/6/2018	4/5/2019
4/7/2018	4/15/2019
4/16/2018	5/15/2019
5/16/2018	5/16/2019
5/25/2018	5/18/2019
11/21/2018	5/19/2019
11/22/2018	5/26/2019
11/23/2018	
11/28/2019	
11/29/2018	
12/1/2018	
12/5/2018	
12/16/2018	
12/17/2018	
12/24/2018	

Notice of Violations and Intent to File Suit